

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY SW
DEPUTY

CODY PERRY,

PLAINTIFF,

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V.

CAUSE NO. 1:18-CV-767-LY

CITY OF LLANO, MATTHEW GRANT
HARDIN, MELISSA SLOAN, AND
KEVIN RATLIFF,

DEFENDANTS.

ORDER ON REPORT AND RECOMMENDATION

Before the court are Defendant Kevin Ratliff's Rule 12(b) Motion to Dismiss Plaintiff's Second Amended Complaint filed January 23, 2019 (Doc. #35) and Defendant City of Llano's Motion to Dismiss Plaintiff's Second Amended Complaint Pursuant to Rule 12(b)(6) & Brief in Support filed January 25, 2019 (Doc. #36), along with all responses and replies. The motions, responses, and replies were referred to the United States Magistrate Judge for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

The magistrate judge filed his Report and Recommendation on April 29, 2019 (Doc. #47), recommending that this court grant Ratliff's motion to dismiss and dismiss Plaintiff's claims against him with prejudice. The magistrate judge further recommends that this court grant the City of Llano's motion to dismiss and dismiss Plaintiff's claim against City of Llano with prejudice. On May 13, 2019, Plaintiff filed Plaintiff's Objections to Report and Recommendation of United States Magistrate Judge (Doc. #48). Defendant Kevin Ratliff's Response to Plaintiff's Objections to Report

and Recommendation of United States Magistrate was filed May 14, 2019 (Doc. #50). Defendant City of Llano's Response to Plaintiff's objections to Report and Recommendations of the United States Magistrate was filed May 16, 2019 (Doc. #51).

On June 5, 2019, the parties filed an Agreed Motion for Stay, requesting that the court stay all deadlines in the parties' proposed Scheduling Order until the court either accepts or rejects the magistrate judge's Report and Recommendation (Doc. #52). In light of Plaintiff's objections, the court has undertaken a *de novo* review of the entire case file and finds that the magistrate judge's Report and Recommendation should be approved and accepted by the court for substantially the reasons stated therein.

In his objections, Plaintiff Cody Perry argues that the magistrate judge misapplied the standard for deliberate indifference and failed to draw an inference of injuries in prior cases. Having reviewed the objections, responses, and pleadings, the court finds that the court finds that the magistrate judge properly applied the deliberate-indifference standard, and concludes that there facts in the pleadings to support the existence of an injury.

IT IS THEREFORE ORDERED that Plaintiff's Objections to Report and Recommendation of United States Magistrate Judge (Doc. #48) are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge (Doc. #47) is **ACCEPTED AND ADOPTED** by the court as stated herein.

IT IS FURTHER ORDERED that Defendant Kevin Ratliff's Rule 12(b) Motion to Dismiss Plaintiff's Second Amended Complaint filed January 23, 2019 (Doc. #35) is **GRANTED**. Plaintiff Cody Perry's claims against Defendant Kevin Ratliff are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Defendant City of Llano's Motion to Dismiss Plaintiff's Second Amended Complaint Pursuant to Rule 12(b)(6) filed January 25, 2019 (Doc. #36) is **GRANTED**. Plaintiff Cody Perry's claim against Defendant City of Llano is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the parties' Agreed Motion for Stay filed June 5, 2019 (Doc. #52) is **DISMISSED**.

Plaintiff Cody Perry's claims against Defendants Matthew Grant Hardin and Melissa Sloan remain pending before the court.

SIGNED this 6th day of June, 2019.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE